

REMARKS/ARGUMENTS

Reconsideration of this application is requested. This Amendment accompanies a Request for Continued Examination and addresses the issues raised in the Final Rejection of November 26, 2008.

The claims have been amended in order to more particularly point out and distinctly claim that which applicants regard as their invention. Claims 1-16 have been canceled thus resolving the claim clarity issue raised on page 2 of the Final Rejection.

Claims 17-31 have been replaced with three sets of claims. Basis for each claim set which derive from previous claims 17-31 is as follows:

32	17, 24, 25, 29
33-41	18-20, 23, 26-28, 30 and 31
42	18-20, 24, 25, 29
43-48	23, 26-28, 30 and 31
49	17 and 29
50-54	18-20, 23 and 31

Applicants request that examination continue on the basis of the new claims presented above. To the extent that the examiner's concerns might extend to the new claims presented above, the rejection of previous claims 17-31 is traversed.

Applicants have previously addressed the applied references and continue to believe that the combination is inappropriate and based on hindsight as the examiner has not established any particular reason why these two documents should or could be combined. Moreover, it is submitted that the rejection is improperly based and not consistent with current judicial requirements. The legal question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) secondary considerations, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

An obviousness rejection must rest on a sound factual basis with these facts being deduced without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption, or hindsight reconstruction to supply deficiencies in the factual basis for the

rejection. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). As the Federal Court has repeatedly cautioned, one cannot employ hindsight by using the applicant's own disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. *See, e.g., Grain Processing Corp. v. American Maize-Products Co.*, 840 F.2d 902, 907 (Fed. Cir. 1988). That is, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 127 S. Ct. at 1741 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

As explained in the response of August 19, 2008, the object of Matsumoto is to improve light resistance of a diene-based rubber-modified styrene-based resin. Matsumoto merely provides general description for coloring agents with no particular concern for the functionality (if any) of the pigments. There is no description of IR refractive pigments.

Therefore, applicants consider the examiner's combination of Matsumoto and Sliwinski as based on hindsight because it is difficult to reach the present invention even if applying the general coloring agent (not specific IR refractive pigments) to the resin (Sliwinski) similar to the present invention.

Applicants also disagree with the examiner's unsupported assertion in the first sentence on page 4 of the Official Action "... the claimed effects and physical properties, i.e. a temperature rise of not less than 50°C would implicitly be achieved by a composite with all the claimed ingredients". This statement is based on conjecture and in any event is inconsistent with the evidence already contained in the application itself. Applicants have found that it is not necessarily the case that the temperature rise is not less than 50°C in all of the systems blending the inorganic pigment [B]. The examiner's attention is directed to reference examples 1, 2, and 5 and note in particular comparative example 7 where the stability of the product is poor. *See* the data in Tables 6 and 7 found at pages 52-53 of the specification and also the discussion of these results in the following pages 54 and 55 and note in particular the results of comparative example 7 in which the content of the inorganic pigment was small and the resultant composition exhibited an L value as high as 50, but had a insufficient stability of low-heat accumulating properties.

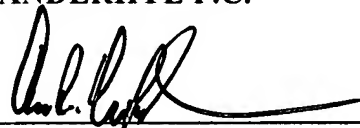
The examiner is reminded that the results presented in the original specification accompanied by the executed declaration signed by the inventors would have significant evidentiary weight, comparable to the weight given to an executed declaration. It is well established by the Federal Circuit that "the examiner must consider comparative data presented in the specification which is intended to illustrate the claimed invention in reaching a conclusion in regard to the obviousness of claims." *In re Margolis*, 785 F.2d 1029, 228 U.S.P.Q. 1123, 1129 (Fed. Cir. 1993).

For the above reasons it is respectfully submitted that claims 32-54 are directed to inventive subject matter and that the rejection of these claims should be withdrawn. Reconsideration and favorable action are solicited. Should the examiner require further information, please contact the undersigned.

Respectfully submitted,

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